



August 15, 2007

VIA E-FILE AND HAND DELIVERY

The Honorable Mary Pat Thynge
 United States District Court for the District of Delaware
 844 N. King Street
 4th Floor, Room 4209
 Wilmington, DE 19801

Christopher A. Selzer
 Associate
 Business Litigation Group
 cselzer@mccarter.com

**Re: Daniel Miller v. ARAMARK Healthcare Support Services Inc., et al.
 C.A. No. 06-534 (MPT)**

Dear Judge Thynge:

We write to provide Your Honor with information regarding the discovery dispute that is the subject of the Court's scheduled conference on Thursday, August 16, 2007. Plaintiff requests leave to conduct a second deposition of Jonathan Hill, an ARAMARK management witness, regarding the documents ARAMARK produced pursuant to the Court's June 26, 2007 Order. These documents were responsive to Plaintiff's Fourth Set of Requests for the Production of Documents and Third Set of Interrogatories. Plaintiffs did not serve these requests on ARAMARK until the last possible day to serve written discovery requests before the close of the discovery period.

The Interrogatories and Requests required ARAMARK to produce an extensive amount of medical equipment work orders for Plaintiff and preventative maintenance forms for Mr. John Ritterhoff, an alleged comparator. Defendants resisted production, in part, because it was onerous and irrelevant, because the requested documents, in and of themselves, would not prove anything. We expressly noted to the Court that even if the documents were produced, they would require further testimony from an individual with knowledge regarding the work order or preventative maintenance order to deduce any useful information from the documents. Plaintiff's counsel represented to the Court that they were able to review Mr. Ritterhoff's preventative maintenance documents with their client and gather the information that they needed from those documents. See Transcript of June 26, 2007 Teleconference, at 9:11-10:22, 12:18-13:6, 14:6-16, 15:23-16:9, 17:3-12, 17:15-18, cited pages attached hereto as Exhibit A. Indeed, prior to the Court's ruling, Plaintiff's counsel specifically represented to the Court that they would not need any additional discovery, even if the documents produced did show something:

THE COURT: All right. Because my understanding is this is the last bit of discovery that is out there. My understanding is even if these documents do show

BALTIMORE

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The Honorable Mary Pat Thyng
August 15, 2007
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something, there is not going to be any further discovery taken. Is that correct?

MR. DELANY: That's correct, Your Honor.

MR. PRIMOS: Yes, Your Honor.

THE COURT: I'm asking plaintiff because that is what I thought was represented the last time.

MR. PRIMOS: Yes, Your Honor.

See Transcript of June 13, 2007 Teleconference, at 9:22-10:6, cited pages attached hereto as Exhibit B. Incredibly, Plaintiff now contends that he must depose Mr. Hill *again* on the very issues that he represented to the Court (prior to its ruling) would not require additional discovery.

The letter from Plaintiff's counsel to the Court, dated August 8, 2007, also explains that the parties have had difficulty scheduling Plaintiff's deposition. The only difficulty has been Plaintiff. Defendants' counsel originally noticed Plaintiff's deposition for August 17, 2007 because Plaintiff was failing to provide available dates. Plaintiff's counsel said they were unavailable. When Defendants' counsel attempted to reschedule for August 24, 2007, Plaintiff's counsel stated that Plaintiff was unavailable until September 4, 2007. Given the current trial start date of December 17, 2007, and the delay occasioned by Plaintiff's belated written discovery requests, we are concerned that Defendants will not have ample opportunity to submit their summary judgment brief, which would necessarily include information gathered during Plaintiff's subsequent deposition, with sufficient time for the Court's consideration before the start of trial. Defendants therefore respectfully request that the Court modify the Scheduling Order to accommodate the additional time needed to conduct Plaintiff's deposition.

Thank you for your consideration and attention to this matter. We look forward to talking with Your Honor on August 16, 2007 to discuss these issues.

Respectfully,

/s/ Christopher A. Selzer

Christopher A. Selzer
DE Bar ID #4305

CAS:jr

Enclosures

The Honorable Mary Pat Thyng
August 15, 2007
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cc: William D. Fletcher, Jr., Esq. (via e-file)
Noel E. Primos, Esq. (via e-file)
Michael P. Kelly, Esq.
William J. Delany, Esq.
Anne E. Martinez, Esq.

Exhibit A

1 IN THE UNITED STATES DISTRICT COURT
2

IN AND FOR THE DISTRICT OF DELAWARE

3 DANIEL MILLER,

4 : CIVIL ACTION

Plaintiff, :

5 v. :

6 ARAMARK HEALTHCARE SUPPORT :
7 SERVICES INC., a domestic :
Corporation; ARAMARK CLINICAL :
8 TECHNOLOGY SERVICES INC., a :
domestic corporation; and :
9 ARAMARK MANAGEMENT SERVICES :
LIMITED PARTNERSHIP, :

10 : NO. 06-534 (MPT)

Defendants.

12 Wilmington, Delaware

13 Tuesday, June 26, 2007 at 8:33 a.m.

14 TELEPHONE CONFERENCE

15 BEFORE: HONORABLE MARY PAT THYNGE, U.S. MAGISTRATE

16 APPEARANCES:

17 SCHMITTINGER & RODRIGUEZ, P.A.

18 BY: NOEL E. PRIMOS, ESQ.
(Dover, Delaware)

19 Counsel for Plaintiff

20 MORGAN, LEWIS & BOCKIUS, LLP

21 BY: WILLIAM J. DELANY, ESQ., and
ANNE E. MARTINEZ, ESQ.
(Philadelphia, Pennsylvania)

23 Counsel for Defendants

24 Brian P. Gaffigan
25 Registered Merit Reporter

1 THE COURT: Well, I don't think you are going to
2 fax them over to me and use my fax machine for those 200
3 pages.

4 MR. PRIMOS: I think they were able to e-mail
5 them to you. Maybe that is not practical.

6 THE COURT: Well, not right now it isn't.

7 MR. PRIMOS: Okay.

8 THE COURT: Why don't you address what
9 information is actually found on those documents that are
10 relevant to the issues or defenses in this case.

11 MR. PRIMOS: Yes, Your Honor. One of the
12 reasons that we were requesting the information from
13 Mr. Ritterhoff is because he is a comparator. I spent a
14 significant amount of time yesterday with my client going
15 through these documents and as we went through the records
16 of the preventive maintenances performed by Mr. Ritterhoff
17 for that period -- and, by the way, Mr. Ritterhoff and
18 Mr. Miller were the two employees who were assigned to do
19 preventive maintenance inspections at the Kent campus for
20 March of '05. As we went through all those documents,
21 Mr. Miller was able to verify that for a large majority
22 of these, Mr. Ritterhoff was fudging his time. Mr. Miller
23 was able to specifically state how, for each of these
24 procedures, there was a significantly greater amount of
25 time recorded for those procedures than would have been

1 necessary to perform those procedures.

2 THE COURT: In his opinion.

3 MR. PRIMOS: In his opinion. But I do think
4 from having worked in the field for 20 years or so, he does
5 have knowledge that he is speaking from. Of course, the
6 defendants would be able to present testimony to refute that
7 but that Mr. Miller was able to go through and not simply
8 say -- we spent a significant amount of time doing this.
9 Mr. Miller wasn't just saying, oh, that is too much time.
10 That is too much time. He specifically would go through
11 each procedure and say this should have taken 10 minutes,
12 this should have taken 15 minutes and add those up and we
13 were consistently coming up with, in many cases, half the
14 time that Mr. Ritterhoff put down.

15 Similarly, we went through all of the records
16 for Mr. Miller and I made him go through those and verify
17 that he was putting down the correct amount of time. And
18 for just about every one, he was able to verify that. He
19 was very honest about it. For one or two, he said I put a
20 little bit more time here than really I should have. For
21 one or two, he said I shorted myself for the time that I
22 should have.

23 Now, one of the things we noticed going through
24 the records for Mr. Miller is that it appeared that not all
25 of the records were there and we don't know what the

1 explanation is for that. For example, and I know Your Honor
2 doesn't have a document, but the very last page of the
3 produced -- I'm sorry -- the very last page of the documents
4 that were produced for Mr. Miller, which is Bates stamped
5 A001055, talks about a preventive maintenance procedure done
6 on a transmitter and that is the only document that we saw
7 in all the documents produced for Mr. Miller that had to do
8 with any work performed on a transmitter. Mr. Miller,
9 however, recalls that during the month of March, he did
10 approximately 20 transmitters. So it doesn't make sense
11 that only one transmitter would show up for the first two
12 weeks of March and we don't know what the explanation is
13 for that?

14 MR. DELANY: I can give you the explanation.
15 It's an extremely difficult process to find these things.
16 That has been our point all along.

17 MR. PRIMOS: So are you saying, Will, that you
18 don't believe you found all of the documents that we were
19 requesting?

20 MR. DELANY: No, what I'm saying is my guy
21 searched for eight hours and was able to find this level of
22 documentation. Eight hours is a reasonable search for a
23 two-week period. I think that is pretty reasonable.

24 THE COURT: Because they can't just plug in a
25 name in a computer system to spit out who does what because

1 of the way the documents are completed. That's what I
2 understand.

3 MR. DELANY: Correct.

4 THE COURT: I guess they could -- I don't know.
5 I don't know if you can and plug in for -- in other words,
6 you have to go through each document, every document related
7 to every piece of equipment; is that what you are saying?

8 MR. DELANY: Correct, Your Honor. There is also
9 the problem if the plaintiff didn't fill out the paperwork
10 correctly, it makes it more difficult to find. I suspect
11 that is the case given the plaintiff's propensity not to
12 fill out the paperwork correctly, which is part of the
13 reason we're here.

14 MR. PRIMOS: Your Honor, that is what we
15 determined in looking through the documents.

16 THE COURT: And then how is it relevant, Noel,
17 to the issue, to your claim?

18 MR. PRIMOS: Well, with respect to
19 Mr. Ritterhoff, one of the claims we've been making in this
20 case that is Mr. Ritterhoff was treated preferentially. He
21 was not performing the work that he should have been
22 performing. And one of the things that these documents
23 indicate is that he was recording a lot of time for these
24 procedures that he shouldn't have been spending on these
25 procedures. So either he was going a lot more slowly than

1 he should have been or he was putting down time that he
2 did not spend. And that was Mr. Miller's experience and
3 other witnesses that we will call, their experience with
4 Mr. Ritterhoff, that he was not performing the work that he
5 should have been performing. And so at least with respect
6 to Mr. Ritterhoff's records, that would support that.

7 With respect to the other records, one of the
8 things we were hoping to show with Mr. Miller's records
9 was the volume of work that he was expected to perform.
10 However, it appears from what Aramark's counsel is saying
11 that that can't be reliably shown because they can't find
12 all of the documents to show the work Mr. Miller was
13 performing.

14 THE COURT: That's assuming your client's memory
15 is accurate, too, about all the work that he thinks he was
16 doing in a specific period of time. And he may have been
17 doing it. But the problem is there is no easy means to
18 plug in an employee's name and have the employee's name
19 then associated with each piece of equipment that he may
20 have worked on or had contact with during that time period.
21 It's done by each piece of equipment, which I have a feeling
22 probably outnumbers the employees by about 10 to 1.

23 MR. PRIMOS: Right.

24 MR. DELANY: Your Honor, this is Will Delany. I
25 have two issues.

1 THE COURT: Well, Will, let Noel complete his
2 thought.

3 MS. DAVIS: I'm sorry, I didn't hear it. I
4 didn't mean to cut anybody off. I'm sorry.

5 THE COURT: Okay.

6 MR. PRIMOS: One other thing I would say, Your
7 Honor. We did have a chance to spend or I had a chance to
8 spend -- of course, Bill has been in trial -- about one hour
9 with Mr. Miller yesterday and then he spent an additional
10 couple of hours going through the documents.

11 It might be that if we had more opportunities to
12 sit down with Mr. Miller and with my co-counsel, you know,
13 there would be other things in these documents that we would
14 find that would be significant but those are the things that
15 jumped out at us just with the limited amount of time that
16 we had to spend on it.

17 THE COURT: Okay.

18 MR. DELANY: Your Honor, two issues. One, I'm
19 hearing two articulations for why we should continue this
20 very exhaustive and time consuming process. One is that
21 they want to see how much time was logged during this time
22 period and, two, they believe that plaintiff's objective
23 view of somebody else's work is relevant. So let me take
24 both of those issues.

25 On the time issue, I just learned from Mr. Hill

1 today, our client, that he has a summary for the two-month
2 period of everyone's entered time. So I think that
3 short-circuits that issue. And I'm willing to produce that,
4 Your Honor. I haven't seen it yet but I will work with him
5 and we'll get it produced so I think that takes this off the
6 table.

7 THE COURT: And what is the source of that
8 information?

9 MR. DELANY: Apparently, he compiles it at the
10 end of each week for his recordkeeping purposes. So it's a
11 part of his normal process. And it was not requested, Your
12 Honor, but we're willing to make it available if it will
13 short-circuit this issue.

14 On the second issue, I don't think plaintiff's
15 objective view of how long it took someone else to perform a
16 job based solely on the recording that job is relevant. You
17 need that person's testimony as to what it was that job was
18 all about and why it took the time it took.

19 THE COURT: Well, wouldn't the documents
20 indicate what the job entailed?

21 MR. DELANY: Only in a summary fashion, Your
22 Honor.

23 MR. PRIMOS: Your Honor, I beg to differ. I was
24 looking at it. And though it is a fairly short explanation
25 there, it is detailed. It tells exactly what procedures

1 were performed on a unit, whether it was replacing a
2 battery, whether it was testing an alarm. And these are
3 standard procedures that are performed. And, for example,
4 my client, because of his experience in the field, knows how
5 long it takes to replace a battery on this particular type
6 of equipment or machine, how long it takes to do these other
7 procedures. So I think while there is not a lot of words
8 there, they are specific in their description of what work
9 was performed.

10 MR. DELANY: Your Honor, this is Will Delany.
11 And I think I was kind of cut off there. Let me read one to
12 you and let me finish out my thought on this issue. I'll
13 read one.

14 This was one done by John Ritterhoff, and it
15 took an hour and 15 minutes.

16 Verified operation, function and alarms. Unit
17 battery not holding a charge. Replace battery and charge
18 unit. Output set, 400 milliliter HR, actual 404 MLHR.
19 Occlusion pressure set. Six psi. Actual, six psi. Chassis
20 leakage. Current 10.2 micro amps. Ground resistance .01
21 ohms.

22 That is the first document for Mr. Ritterhoff.
23 That took an hour and 15 minutes. Maybe Mr. Primos can
24 decide, can explain to me how he can extrapolate from this
25 that that is not an appropriate period of time to deal with

1 the troubleshooting of this machine and addressing the
2 chassis leakage.

3 MR. PRIMOS: Your Honor, Mr. Miller again has
4 experience in this field and there is a standard procedure
5 for each of these functions and he was able to explain this
6 function should take this amount of time, this function
7 should take that amount of time. It's not a type of
8 profession, for example, when an attorney says he wrote a
9 brief, well, there could be all kinds of things going do
10 that. That is different from saying replace the battery and
11 there should be a standard amount of time that it should
12 take to perform that function.

13 MR. DELANY: What is the standard amount of time
14 to address a chassis leakage?

15 MR. PRIMOS: There should be a standard amount
16 of time and Mr. Miller was able to give an explanation.
17 Now, Your Honor, again, the defendants would be able to
18 refute that with testimony.

19 MS. DAVIS: And when you take your BMW or your
20 Cadillac or your Chevy in and you have a transmission
21 problem, are you telling me that your mechanic is able to
22 fix that transmission in 15 minutes every time or does it
23 vary?

24 MR. PRIMOS: Your Honor, I think what this is
25 illustrating is that is evidence that should be in front of

Exhibit B

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

3 DANIEL MILLER, : CIVIL ACTION
4 Plaintiff, :
5 v. :
6 ARAMARK HEALTHCARE SUPPORT :
7 SERVICES INC., a domestic :
8 Corporation; ARAMARK CLINICAL :
9 TECHNOLOGY SERVICES INC., a :
10 domestic corporation; and :
11 ARAMARK MANAGEMENT SERVICES :
12 LIMITED PARTNERSHIP, :
13 Defendants. : NO. 06-534 (MPT)

Wilmington, Delaware
Wednesday, June 13, 2007 at 11:45 a.m.
TELEPHONE CONFERENCE

BEFORE: HONORABLE MARY PAT THYNGE, U.S. MAGISTRATE

16 APPEARANCES:

SCHMITTINGER & RODRIGUEZ, P.A.
BY: NOEL E. PRIMOS, ESQ., and
WILLIAM D. FLETCHER, JR., ESQ.
(Dover, Delaware)

Counsel for Plaintiff

MORGAN, LEWIS & BOCKIUS, LLP
BY: WILLIAM J. DELANY, ESQ., and
ANNE E. MARTINEZ, ESQ.
(Philadelphia, Pennsylvania)

Counsel for Defendants

Brian P. Gaffigan
Registered Merit Reporter

1 production. Find out if the hospital is willing to let you
2 do that. And if we have any problems or there is concerns
3 about it, then we will be talking about this some time
4 during the week of June 25th.

5 And get the hospital attorney, tell him that he
6 has to be participating in this as well. I'll accept an
7 oral motion or even a letter beforehand. I want to get this
8 done and resolved. And now that there is a new factor in
9 this, I want that new factor to be updated and involved.

10 MR. DELANY: Your Honor, I hate to push on this.
11 Is it possible to do a day other than the 25th?

12 THE COURT: I said some time during the week of
13 June 25th.

14 MR. DELANY: Okay.

15 THE COURT: I'm looking at possibly June 26th
16 either at 8:30 or 9:00 o'clock in the morning. I don't know
17 how that works on everybody's schedule.

18 MR. DELANY: For defendants, Your Honor, that
19 works fine.

20 MR. PRIMOS: That works for plaintiff, Your
21 Honor.

22 THE COURT: All right. Because my understanding
23 is this is the last bit of discovery that is out there. My
24 understanding is even if these documents do show something,
25 there is not going to be any further discovery taken. Is

1 that correct?

2 MR. DELANY: That's correct, Your Honor.

3 MR. PRIMOS: Yes, Your Honor.

4 THE COURT: I'm asking plaintiff because that is
5 what I thought was represented the last time.

6 MR. PRIMOS: Yes, Your Honor.

7 THE COURT: All right. Will, you need to get in
8 contact with the hospital attorney, inform him or her that
9 we're going to be doing this at 8:30 in the morning on June
10 26th. I need to know by no later than Thursday of this week
11 whether that date and time is doable. And if it's not
12 doable, find out what other date and time on June 26th or
13 June 28th that he or she would be available.

14 MR. DELANY: I will, Your Honor.

15 THE COURT: So counsel understand if we have to
16 change it from the 26th, it will be changed to the 28th.
17 That will require you also, Will, to communicate with
18 plaintiff's counsel. I believe those days are fairly open
19 for me so I can probably fill it in. So if it meets all of
20 counsel's needs, it will probably be okay with me as well if
21 we need to change it.

22 MR. PRIMOS: Your Honor, just for scheduling,
23 both Mr. Fletcher and I would have a problem with Thursday
24 morning.

25 THE COURT: Okay.